

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/006,175	CAPIK ET AL.	
	Examiner	Art Unit	Aw
Kevin S Wood	2874		

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the After Final Amendment filed 26 January 2004.
2. ☒ The allowed claim(s) is/are 1,2,4-9,12,13,15-18,20-22 and 24.
3. ☒ The drawings filed on 26 January 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____  |

  
**Brian Healy**  
**Primary Examiner**

## **ALLOWANCE**

### ***Response to Amendment***

1. This action is responsive to the Amendment After Final filed on 26 January 2004. Claim 23 is now cancelled. No claims have been amended and no new claims have been added. Claims 1, 2, 4-9, 12, 13, 15-18, 20-22, and 24 are now pending in the application.
2. Based on the Amendment, the objections to the Drawings are withdrawn and the rejection of claim 23 under 35 USC 112, second paragraph, is also withdrawn.

### ***Response to Arguments***

3. Applicant's arguments filed on 26 January 2004 have been fully considered and they are persuasive. The Applicants' primary argument is that the Fan et al. reference (U.S. Patent No. 6,449,406 to Fan et al.) does not disclose "the adapting of beam steering parameters in response to an optical loss parameter", nor is it obvious to adjust a beam steering parameter (micro-mirror) in response to a detected failure. The examiner has thoroughly reviewed these arguments, and agrees that there is not enough evidence to show that it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the micro-mirrors in response to the detection of a failure. Based on this, the examiner has decided to withdraw the rejections/objections to claims 1, 2, 4-9, 17, 18, 20, and 21.

***Allowable Subject Matter***

4. Claims 1, 2, 4-9, 12, 13, 15-18, 20-22, and 24 are allowed.
5. The following is an examiner's statement of reasons for allowance:

The primary reason for allowance of the claims is the non-obvious improvement of U.S. Patent No. 6,449,406 to Fan et al. The improvement comprises the adapting of the beam steering parameter in response to the optical loss parameter.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

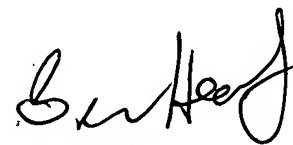
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin S Wood whose telephone number is (571) 272-2364. The examiner can normally be reached on Monday-Thursday (7am - 5:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney B Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2874

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KSW

A handwritten signature in black ink, appearing to read "Brian Healy".

**Brian Healy**  
**Primary Examiner**